

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

STATE OF MISSISSIPPI, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official  
capacity as Secretary of Health and Human  
Services, *et al.*,

Defendants.

Civil Action No. 1:22-cv-00113-HSO-RPM

**JOINT MOTION FOR STAY PENDING RULEMAKING**

The parties respectfully move for a stay of this proceeding pending the intended rulemaking of the Centers for Medicare & Medicaid Services (CMS) that would propose removing the challenged improvement activity. The parties propose to submit a joint status report by September 2, 2025, to update the Court on developments in that intended rulemaking process. The reasons for this motion are set forth further below.

1. Seven state Plaintiffs challenge a rule promulgated by CMS implementing part of the Merit-based Incentive Payment System (“MIPS”). Under MIPS, CMS adjusts payments for covered professional services under Medicare Part B based on CMS’s assessment of MIPS eligible clinicians’ performance on measures and activities specified by CMS under four performance categories, including the clinical practice improvement activities performance category. MIPS eligible clinicians, defined at 42 U.S.C. § 1395w-4(q)(1)(C) and 42 C.F.R. § 414.1305 as including physicians, physician assistants, nurse practitioners, and other suppliers of covered professional services, who participate in MIPS may select from a list of clinical practice improvement activities to earn credit for completion of the improvement activities performance category, which may

qualify the MIPS eligible clinician for a positive payment adjustment. The States challenge a rule establishing one of those voluntary activities, “Create and Implement an Anti-Racism Plan.” *See* Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes, 86 Fed. Reg. 64,996, 65,969 (Nov. 19, 2021), Administrative Record (AR) 0001, 0005.

2. Currently pending before this Court are the parties’ cross-motions for summary judgment. *See* Pls.’ Mot. for Summ. J, ECF No. 167; Defs.’ Cross-Mot. for Summ. J., ECF No. 169.

3. On May 6, 2025, CMS announced the suspension of eight MIPS improvement activities for the calendar year (CY) 2025 performance period, including the improvement activity at issue in this action. *See* Notice of Suspension of Improvement Activity, ECF No. 198. The announcement stated that CMS “intend[s] to propose removing these improvement activities in future rulemaking.” *Id.*

4. On May 8, 2025, this Court directed “the parties to confer regarding” the Notice of Suspension of Improvement Activity “and inform the Court on or before May 29, 2025, whether the pending motions” for summary judgment “and/or this entire civil action are rendered moot, or whether further action by the Court is necessary.” Text Only Order (May 8, 2025).

5. The parties have conferred and agree that, depending on the outcome of CMS’s intended rulemaking, this action may become moot. Moreover, because CMS announced the suspension of the challenged improvement activity, any prejudice to Plaintiffs pending the intended rulemaking process is mitigated.

6. Accordingly, to avoid the expenditure of judicial resources to resolve an action that may become moot, the parties respectfully request a stay of proceedings pending the intended rulemaking process.

7. To ensure the Court stays informed on the status of the intended rulemaking, the parties propose to submit a joint status report by September 2, 2025, to update the Court on further developments.

For these reasons, the parties respectfully ask the Court to stay proceedings pending further updates on the intended rulemaking. A proposed order is attached.

Dated: May 29, 2025

s/ Justin L. Matheny  
LYNN FITCH

*Attorney General*

Scott G. Stewart (MS Bar No. 106359)

*Solicitor General*

Justin L. Matheny (MS Bar No. 100754)

*Deputy Solicitor General*

MISSISSIPPI ATTORNEY

GENERAL'S OFFICE

P.O. Box 220

Jackson, MS 39205-0220

(601) 359-3680

scott.stewart@ago.ms.gov

justin.matheny@ago.ms.gov

s/ Cameron T. Norris

Cameron T. Norris\*

CONSOVOY MCCARTHY PLLC

1600 Wilson Blvd., Ste. 700

Arlington, VA 22209

(703) 243-9423

cam@consovoymccarthy.com

Respectfully submitted,

YAAKOV M. ROTH  
Acting Assistant Attorney General

MICHELLE BENNETT  
Assistant Director, Federal Programs Branch

/s/ Alexander W. Resar

ALEXANDER W. RESAR

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

P.O. Box 883

Washington, DC 20044

Phone: (202) 616-8188

Email: alexander.w.resar@usdoj.gov

*Counsel for Defendants*

s/Autumn Hamit Patterson

TIM GRIFFIN

*Attorney General*

Autumn Hamit Patterson

*Solicitor General*

OFFICE OF THE ARKANSAS ATTORNEY

GENERAL

323 Center Street, Suite 200

Little Rock, AR 72201

(501) 682-2700

autumn.patterson@arkansasag.gov

s/ Aaron J. Silletto

RUSSELL COLEMAN

*Attorney General*

Aaron J. Silletto\*

*Assistant Attorney General*

KENTUCKY OFFICE OF THE

ATTORNEY GENERAL

700 Capital Avenue, Suite 118

Frankfort, Kentucky

(502) 696-5439

Aaron.Silletto@ky.gov

s/ Kelsey L. Smith

Elizabeth B. Murrill\*

*Attorney General*

Kelsey L. Smith\*

*Deputy Solicitor General*

LOUISIANA DEPARTMENT OF JUSTICE

1885 N. Third Street

Baton Rouge, Louisiana 70804

(225) 428-7432

smithkel@ag.louisiana.gov

s/ Joshua M. Divine

ANDREW BAILEY

*Attorney General*

Joshua M. Divine\*

*Solicitor General*

Samuel C. Freedlund\*

OFFICE OF THE MISSOURI

ATTORNEY GENERAL

815 Olive Street

Suite 200

St. Louis, MO 63101  
(314) 340-4869  
Josh.Divine@ago.mo.gov  
Samuel.Freedlund@ago.mo.gov

s/ Christian Corrigan

AUSTIN KNUDSEN

*Attorney General*

Christian Corrigan\*

*Solicitor General*

MONTANA DEPARTMENT OF JUSTICE

215 North Sanders Street

Helena, MT 59601

christian.corrigan@mt.gov

*Counsel for Plaintiffs*